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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0106]

RIN 0579-AE10

Importation of Phalaenopsis Spp. Plants for Planting in Approved Growing Media From China to the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants for planting to authorize the importation of Phalaenopsis spp. plants for planting from China in approved growing media into the continental United States, subject to a systems approach. The systems approach consists of measures that are currently specified in the regulations as generally applicable to all plants for planting authorized for importation into the United States in approved growing media. This rule allows for the importation of Phalaenopsis spp. plants for planting from China in approved growing media, while providing protection against the introduction of quarantine plant pests.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colón, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2302.

## SUPPLEMENTARY INFORMATION:

### Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in “Subpart--Plants for Planting,” §§ 319.37 through 319.37-14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

The regulations differentiate between prohibited articles and restricted articles. Prohibited articles are plants for planting whose importation into the United States is not authorized due to the risk the articles present of introducing or disseminating quarantine plant pests. Restricted articles are articles authorized for importation into the United States, provided that the articles are subject to mitigation measures to address such risk.

Conditions for the importation into the United States of restricted articles in growing media are found in § 319.37-8. Within that section, the introductory text of paragraph (e) lists taxa of restricted articles that may be imported into the United States in approved growing media, subject to the provisions of a systems approach. Paragraph (e)(1) of § 319.37-8 lists the approved growing media, while paragraph (e)(2) contains the provisions of the systems approach. Within paragraph (e)(2), paragraphs (i) through (viii) contain provisions that are generally applicable to all the taxa listed in the introductory text of paragraph (e), while paragraphs (ix) through (xii) contain additional, taxon-specific provisions.

In response to a request from the national plant protection organization (NPPO) of China, on June 1, 2015, in a proposed rule<sup>1</sup> published in the Federal Register (80 FR 30959-30961,

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<sup>1</sup> To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0106>.

Docket No. APHIS-2014-0106), we proposed to amend the introductory text of paragraph (e) of § 319.37-8 to add Phalaenopsis spp. plants for planting from China to the list of taxa authorized for importation into the United States in approved growing media. We also proposed to add a paragraph (e)(2)(xii) to § 319.37-8 that would specify that such plants for planting may only be imported into the continental United States.

We solicited comments concerning our proposal for 60 days ending July 31, 2015. We received eight comments by that date. They were from the NPPO of China, two State departments of agriculture, an organization representing State departments of agriculture, an organization representing horticulture in the State of Hawaii, a plant pathologist specializing in Phalaenopsis spp. plants for planting, and private citizens.

One commenter suggested we finalize the rule, as written. The remaining commenters had questions and comments regarding the rule and its supporting documents. We discuss the comments that we received below, by topic.

#### Comments Regarding the Pest Risk Assessment and Risk Management Document

In response to the NPPO of China's request, we prepared a pest risk assessment (PRA), titled "Importation of Phalaenopsis spp. Orchids in Growing Media from China into the Continental United States: A Pathway-Initiated Risk Assessment," to analyze the potential pest risk associated with the importation of Phalaenopsis spp. plants for planting in approved growing media into the continental United States from China. We also prepared a risk management document (RMD), titled "Importation of Phalaenopsis spp. Orchids in Approved Growing Media from China into the Continental United States," to identify the phytosanitary measures necessary to ensure the safe importation into the continental United States of Phalaenopsis spp. plants for planting in approved growing media from China.

One commenter stated that the PRA did not consider the possibility that viral pathogens of Phalaenopsis spp. plants for planting could be introduced into the continental United States through the importation of Phalaenopsis spp. plants for planting in approved growing media from China.

In developing our PRAs, we first prepare a list of pests of the commodity that we have determined to occur in the particular foreign region. We then determine whether the pests are quarantine pests, which the regulations define as plant pests that are of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled. If the pests are quarantine pests, we then assess whether they could be introduced into the United States through the importation of the commodity.

The PRA identified five viral pathogens of Phalaenopsis spp. plants for planting that we have determined to occur in China. However, none of these pathogens are quarantine pests. Accordingly, we did not assess whether they are likely to follow the pathway on Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States.

One commenter pointed out that, in the PRA, the list of plant pests of Phalaenopsis spp. plants for planting that are known to occur in China did not include Dickeya dieffenbachiae, a bacterial pathogen, and Colletotrichum karstii, a pathogenic fungus. The commenter stated that these pests occur in China and could follow the pathway on Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States. The commenter concluded that the pests therefore should be added to the PRA, and mitigation measures specific to the pests should be added to the RMD and rule.

D. dieffenbachiae and C. karstii were detected in China after the PRA and RMD were drafted, and we agree with the commenter that they could follow the pathway on Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States. However, we do not consider it necessary to revise the RMD or rule to specify mitigation measures for these pests. We reserve pest-specific mitigation measures for quarantine pests. Neither D. dieffenbachiae nor C. karstii is a quarantine pest: Both are present in the United States, and neither pest is under official control.

Two commenters pointed out that the PRA identified four quarantine pests that could follow the pathway on Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States: Spodoptera litura, Thrips palmi, Cylindrosporium phalaenopsidis, and Lissachatina fulica. The commenters stated that, if these pests became established throughout the United States, they could result in significant economic losses for domestic producers. For this reason, the commenters did not support the proposed rule.

We agree that, if the quarantine pests identified by the PRA were to become established throughout the United States, they could cause economic losses for domestic producers. However, for the reasons specified in the RMD and the proposed rule itself, if the provisions of this rule are adhered to, we have determined that they will mitigate the plant pest risk associated with the importation of Phalaenopsis spp. plants for planting in approved growing media from China.

Because we had identified more pests that could follow the pathway on orchids from Taiwan to the United States than from China to the continental United States, one commenter surmised that we were establishing more favorable trading conditions for China than for Taiwan regarding the export of orchids to the United States.

The commenter's assumption is incorrect. There are more quarantine pests of Oncidium spp. known to occur in Taiwan that could follow the pathway on Oncidium spp. plants for planting in approved growing media from Taiwan to the United States than there are of Phalaenopsis spp. known to occur in China that could follow the pathway on Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States.

Finally, one commenter asked whether we were confident that the PRA had identified all the plant pests of Phalaenopsis spp. plants for planting in China, given China's size.

We are confident. In the PRA, we took into consideration China's size and relied on multiple sources to identify pests of Phalaenopsis spp. plants for planting in China.

#### Comments Regarding Movement to Hawaii

One commenter noted that the rule only proposed to authorize the importation of Phalaenopsis spp. plants for planting in approved growing media from China to the continental United States, and did not propose to authorize such importation to Hawaii or the territories of the United States. The commenter asked whether, once Phalaenopsis spp. plants for planting in approved growing media from China enter the continental United States, they subsequently may be shipped to Hawaii or the territories. If the rule does not authorize such reshipment, the commenter asked how we intended to prevent it from occurring.

This rule expressly prohibits such reshipment, and we will use inspections to prevent it from occurring.

#### Comments Regarding the Proposed Systems Approach

We proposed that the Phalaenopsis spp. plants for planting would have to be grown in a greenhouse in which sanitary procedures adequate to exclude quarantine pests are always employed. We proposed that, at a minimum, the greenhouse would have to be free from sand

and soil, have screenings with openings of not more than 0.6 mm on all vents and openings except entryways, have entryways equipped with automatic closing doors, regularly clean and disinfect floors, benches, and tools, and use only rainwater that has been boiled or pasteurized, clean well water, or potable water to water the plants.

One commenter stated that plant pest population densities can vary significantly within a foreign region. The commenter expressed concern that sanitary procedures that are adequate to exclude quarantine pests from a greenhouse in one region of China may not be adequate to do so in another region.

Growers must employ sanitary procedures that are adequate to exclude quarantine pests from the Phalaenopsis spp. plants for planting grown at the greenhouse that are intended for export to the United States. These sanitary procedures must therefore correspond to the quarantine pest risk associated with the area in which the greenhouse is located. Accordingly, if the greenhouse is located in an area of China with particularly high population densities of a certain quarantine pest, the grower may need to employ additional safeguards to exclude that pest from affecting plants for planting at the greenhouse. The NPPO of China will make this determination regarding whether additional safeguards are necessary, and will communicate the safeguards needed to the greenhouse in an agreement with the grower. The grower must enter into such an agreement with the NPPO in order to export Phalaenopsis spp. plants for planting in approved growing media to the United States.

Another commenter expressed concern that screenings with openings of 0.6 mm would not preclude T. palmi from entering the greenhouses. The commenter cited studies indicating that 40 to 50 percent of T. palmi that attempt to pass through such an opening can do so.

We agree that screenings with openings of 0.6 mm may not preclude all T. palmi from entering the greenhouse. However, as we mentioned above, in order to comply with the provisions of the systems approach, growers will have to employ sanitary procedures that are sufficient to exclude quarantine pests from the Phalaenopsis spp. intended for export to the United States. Accordingly, growers in areas where T. palmi are present will be expected to develop a pest management plan for T. palmi to address incursions of this pest into the greenhouse; the plan must have sufficient safeguards to prevent Phalaenopsis spp. plants for planting intended for export to the United States from becoming infested with T. palmi. The agreement that the grower enters into with the NPPO of China will specify the additional safeguards that the grower will use.

In the proposed rule, we proposed to add a condition restricting the importation of Phalaenopsis spp. from China in approved growing media to the continental United States to § 319.37-8 as paragraph (e)(2)(xii). In this final rule, it is added as paragraph (e)(2)(xiii).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.



APHIS is amending the regulations in 7 CFR 319.37-8(e) to allow the importation from China into the continental United States of orchids of the genus Phalaenopsis established in an approved growing medium, subject to specified growing, inspection, and certification requirements.

Prior to this rule, Phalaenopsis spp. imported from China were required to be bare-rooted. Eliminating this requirement is expected to increase the number and quality of orchids imported from China by U.S. producers, who then finish the plants for the retail market. This change could result in cost savings for these U.S. producers, which may or may not be passed on to U.S. buyers. The amended regulations could also result in the importation of market-ready Phalaenopsis spp. in approved growing media from China that would directly compete at wholesale and retail levels with U.S. finished potted orchids. The latter scenario is considered unlikely, given the technical challenges and additional marketing costs incurred when shipping finished plants in pots.

While many of the U.S. entities that will be affected by the rule such as orchid producers and importers may be small by Small Business Administration standards, we expect economic effects for these entities to be modest.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

## National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of Phalaenopsis spp. plants for planting from China, subject to a required systems approach, will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site. Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799-7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final

rule, which were filed under 0579-0439, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-8 is amended as follows:

a. In paragraph (e) introductory text, in the entry for “Phalaenopsis spp. from Taiwan”, add the words “and the People’s Republic of China” after the word “Taiwan”.

b. Add paragraph (e)(2)(xiii).

c. Revise the OMB citation at the end of the section.

The addition and revision read as follows:

§ 319.37-8 Growing media.

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(e) \* \* \*

(2) \* \* \*

(xiii) Plants for planting of Phalaenopsis spp. from the People's Republic of China may only be imported into the continental United States, and may not be imported or moved into Hawaii or the territories of the United States.

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(Approved by the Office of Management and Budget under control numbers 0579-0266, 0579-0431, and 0579-0439)

Done in Washington, DC, this 5<sup>th</sup> day of February 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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